

Date: July 23, 2013
To: Thomas J. Bonfield, City Manager
Through: Wanda S. Page, Deputy City Manager
From: Deborah Giles, Director, Department of Equal Opportunity/Equity Assurance
Subject: Amendment to Interlocal Agreement between the City of Durham and Durham County for a Joint Disparity Study

Executive Summary

During the FY2012-13 budget process, the City and County governments discussed the prospects of doing a joint Disparity Study as a way for both entities to update their programs, provide a strong legal basis for providing contracting opportunities to small disadvantaged business enterprises in the event of a legal challenge and share in the costs associated with doing a new study. The City budgeted \$100,000 for the study in its FY12-13 budget. The City Council approved entering into the interlocal agreement on March 18, 2013 and the Durham City Manager and County Manager signed the agreement. When the City and County staff completed a process to select and agree on a contractor to conduct the study, it was found that the amount allocated by the governments for the study was insufficient. The negotiated price of the joint study is a total of \$300,000, raising the City of Durham's equitable share to \$150,000. This request is for an additional allocation of \$50,000 to allow the Disparity Study to proceed.

Recommendation

The Administration recommends that the City Council approve the amendment to the interlocal agreement between Durham City and County governments in the amount of \$50,000 and authorize the City Manager to execute the amendment to the Interlocal Agreement with Durham County for a joint Disparity Study.

Background

The City of Durham conducted a Disparity Study in 2000 to determine the constitutionality of its race and gender based MWBE program. In 2002, the City contracted with a firm to evaluate that study and make recommendations that would meet any applicable constitutional mandates appropriate to the City of Durham. The City adopted a race and gender neutral "Equal Business Opportunity Program" in 2003. This program has been reauthorized every two years since initial implementation without further study and will now sunset in March of 2014. As a best practice, it is recommended that programs that seek to remedy discrimination in contracting activity be studied every three to five years.

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The City Council approved entering into the Disparity Study agreement on March 18, 2013 and the Durham City and County Managers have signed the agreement. Based on the selection process by City and County staff to secure a contractor for the Disparity Study, the current

interlocal agreement now requires an additional allocation of \$50,000. Approval of the additional resources and an amendment to the signed original agreement is needed to for the Disparity Study to proceed.

Issues and Analysis

The City and County of Durham have a signed interlocal agreement to perform a joint Disparity Study. When the contractor was selected, it was noted that the resource allocation by both entities was insufficient to cover the negotiated price of the study. Even with the additional cost, the arrangement for a joint Disparity Study by both the City and County still offers a cost-effective means to protecting the programs of both entities.

Alternatives

The City may choose to withdraw from the current agreement. The current Equal Business Opportunity Program will continue to operate with vulnerability should it be challenged in the courts. The City may choose to fund a study on its own at another point in time, though it has proven difficult since 2005.

Financial Impact

The City budgeted \$100,000 in FY12-13 to fund its portion of a joint Disparity Study. Following the contractor selection process, it was determined that an additional \$50,000 would be needed for the City's equitable share of the cost of the Disparity Study, raising the City's portion of the cost to \$150,000. General Fund non-departmental appropriations will fund the additional \$50,000 in FY13-14.

SDBE

Because this is an interlocal agreement, it was not reviewed by the Department of Equal Opportunity Equity Assurance for compliance with the Ordinance to Promote Equal Business Opportunities in City Contracting.